Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

	)	
In the Matter of	)	
	)	
Fones4All Corp.	)	
Petition for Expedited Forbearance Under	)	WC Docket No. 05-261
47 U.S.C. § 160(c) and Section 1.53	)	
From Application of Rule 51.319(d)	)	
To Competitive Local Exchange Carriers	)	
Using Unbundled Local Switching to Provide	)	
Single Line Residential Service to End Users	)	
Eligible for State of Federal Lifeline Service	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of Section 251 Unbundling Obligations	)	CC Docket No. 01-338
Of Incumbent Local Exchange Carriers	)	
	)	
Fones4All Corp. Emergency Petition for	)	
Interim Waiver of Section 52.319(d) of the	)	
Commission's Rules in the State of California	)	
	)	

OPPOSITION OF AT&T TO FONES4ALL CORPORATION'S
EMERGENCY PETITION FOR INTERIM WAIVER OF SECTION 52.319(d) IN THE STATE OF
CALIFORNIA PENDING COMMISSION ACTION ON THE FONES4ALL PETITION FOR
EXPEDITED FORBEARANCE

AT&T Inc.[1] hereby opposes the emergency petition of Fones4All Corp., which

seeks an interim waiver of Commission Rule 51.319(d) in the State of California

("Waiver Petition") pending Commission action on its petition for expedited forbearance

("Forbearance Petition").

---

[1] On November 18, 2005, SBC Communications Inc. closed on its merger with AT&T Corp. The resulting company is now known as AT&T Inc. Thus, in these comments "AT&T" refers to the merged company, including its ILEC operating subsidiaries.

Fones4All's Waiver Petition seeks an interim waiver of the Commission's rule eliminating the unbundling of local switching pending Commission action on its Forbearance Petition. Fones4All's Waiver Petition fails on every level. First, it ignores that the Forbearance Petition is both fatally defective as a procedural matter and that it fails to meet the statutory requirements for forbearance. Thus, the pendency of its earlier petition does not provide a legitimate basis for its waiver request. Second, the Waiver Petition is based on several key false and misleading facts concerning the support that AT&T has provided in connection with Fones4All's required conversion of its UNE-P lines in California pursuant to the Commission's *Triennial Review Remand Order*.[2] Therefore, the Waiver Petition fails to demonstrate "good cause," as required by Section 1.3 of the Commission's Rules.[3]

As a threshold matter, Fones4All's Forbearance Petition is utterly deficient. As shown in SBC's opposition to that petition, the forbearance Fones4All seeks is simply not available in a Section 10 proceeding. SBC explained that Fones4All "asks the Commission to re-impose on ILECs the obligation to unbundle local switching by 'forbearing' from a Commission rule that eliminates that obligation."[4] However, as SBC demonstrated, "[u]sing forbearance to create new rules . . . is flatly inconsistent with the

---

[2] *Unbundled Access to Network Elements*, WC Docket No. 04-313, 20 FCC Rcd 2553 (2005) ("*Triennial Review Remand Order*").

[3] *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

[4] Opposition of SBC Corporation, CC Docket No. 05-261, filed October 14, 2005 ("SBC Opposition") at 2.

deregulatory goals of the Act in general and section 10 in particular."[5] Moreover, the

Supreme Court has held that "unbundling obligations require an affirmative finding of

impairment,"[6] but the Forbearance Petition merely rehashes arguments that the

Commission flatly rejected in the *Triennial Review Remand Order*, in particular

Fones4All's claim that requesting carriers are entitled to demonstrate impairment on the

basis of a single type of service.[7] Finally, the SBC Opposition showed (at 5-13) that the

Forbearance Petition fails to meet the statutory criteria for forbearance under section 10.

Therefore, the pendency of the Forbearance Petition provides no basis upon which to

grant the requested waiver.

The additional issues raised in the Waiver Petition also fail to demonstrate good

cause on a standalone basis. CLECs that want to transition from UNE-P to a new

facilities-based UNE-L service arrangement must take a number of important preliminary

steps to accomplish their plan. These steps include establishing switching arrangements,

establishing new contractual arrangements with AT&T, and ensuring that their OSS

systems are pre-programmed to send and receive the communications that AT&T needs

to process orders to transition UNE-P service to UNE-L arrangements. The preliminary

planning involved with this type of transition typically takes several months. And, of

---

[5] *Id*.; *see also* Comments of United States Telecom Association, WC Docket No. 05-261
at 3 ("Fones4All's forbearance request is a specious attempt to convince the Commission
to revisit the TRRO and impose on ILECs regulations that were removed by that order.
Rather than file a petition for reconsideration seeking new Commission regulation,
Fones4All has asked the Commission to forbear . . . [T]his request is illogical, however,
because Fones4All is asking the Commission to forbear from a rule that does not exist").
The same illogic applies to Fones4All's request for a waiver here.

[6] SBC Opposition at 2.

[7] SBC Oppposition at 9.

course, in Fones4All's case, these steps were required to be taken with sufficient lead time to ensure a successful transition of its embedded UNE-P base by the Commission's mandated transition deadline of March 11, 2006.[8] However, despite the fact that AT&T made multiple contacts with the CLEC community -- via the Account Team, Accessible Letters and the Amendment process -- to ensure that all parties were aware of the March 11, 2006 deadline, Fones4All did not even begin its contacts with AT&T to commence the contracting process required to support its conversion efforts until mid-September, 2005, more than seven months after the release of the Commission's *Triennial Review Remand Order*.[9] Moreover, Fones4All's assertions in the Petition and the accompanying declaration regarding AT&T responsiveness to Fones4All's requests are false and misleading in several key respects.

The California dispute arose in the context of actions taken by AT&T before the California Public Utilities Commission ("CPUC") with regard to carriers that had not yet completed their arrangements to discontinue their purchases of unbundled switching by the deadline established in the *Triennial Review Remand Order*.[10] After the FCC released that order on February 4, 2005, AT&T made multiple contacts with the CLEC community -- via the Account Team, Accessible Letters and the Amendment process -- to ensure that all parties were aware of the March 11, 2006 deadline. However, as noted above, Fones4All did not even take the first step to contact AT&T about these matters

---

[8] *See* attached Declaration of Cheryl Labat ¶ 3.

[9] *Id*. ¶ 4.

[10] It should also be noted that an Administrative Law Judge of the CPUC is actively involved in these and related matters.

until mid-September 2005, less than six months before the *end* of the designated transition period. Further, as the Labat Declaration (¶¶ 5-8) details, many AT&T personnel were involved in responding to Fones4All, and AT&T often took the initiative in helping Fones4All to determine its needs and providing Fones4All with information necessary to support its planned transition away from UNE-P. Indeed, as that declaration shows, it was Fones4All, not AT&T, that appeared to lack a sense of urgency in implementing a timely transition plan, and it was frequently Fones4All's actions, not AT&T's, that caused delays.[11]

THEREFORE, Fones4All has failed to demonstrate good cause and its Waiver Petition should be denied.

<div style="margin-left:50%">

Respectfully submitted,

/s/ Jim Lamoureux
Jim Lamoureux
Gary L. Phillips
Paul K. Mancini

AT&T Inc.
1401 Eye Street, N.W., Suite 400
Washington, D.C. 20005
(202) 326-8895 – Voice
(202) 408-8745 – Facsimile

Its Attorneys

</div>

March 6, 2006

---

[11] Labat Declaration ¶¶ 7 (Fones4All placed incorrect carrier identification number on its contract amendment, resulting in delay in the filing of its batch hot cut contract amendment with the CPUC) & 9 (initial test orders failed because Fones4All failed to follow the process in updating its CLEC Profile).